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National Association of Independent Insurers
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ASSISTANT VICE PRESIDENT
GOVERNMENT RELATIONS

December 9, 2002

Commission's Secretary
Office of the Secretary
Federal Communications Commission
9300 East Hampton Drive
Capitol Heights, Maryland 20743

RE: Comments of the National Association of Independent Insurers on Proposed Rulemaking CG Docket No. 02-278

Dear Sir/Madam:

The National Association of Independent Insurers (NAII) offers the attached comments on proposed rulemaking CG Docket No. 02-278 to amend the Telephone Consumer Protection Act of 1991 (TCPA). The NAII is a leading property and casualty trade association representing over 715 member companies, writing more than $98 billion in premium annually and comprising over 31 percent of the total market share. NAII member companies write all lines of coverage in all 50 states and the District of Columbia and utilize a variety of distribution systems and marketing techniques.

On behalf of our member companies, **NAII** respectively submits the following comments and asks that they be made part of the official record.

Regulation of Insurance

In the proposed rulemaking the Federal Communications Commission (FCC) solicits comments on whether the commission should use its authority under the TCPA to extend requirements to entities, such as insurers, that fall outside the jurisdiction of the Federal Trade Commission.

Following a 1944 Supreme Court decision in *U.S. v. South-Eastern Underwriters Ass'n*, 322 U.S. 533 (1944), which shattered the precept of state regulation of insurance. Congress enacted the landmark McCarran-Ferguson Act (McCarran-Ferguson), 15 U.S.C.§§ 1011 *et seq.*

McCarran-Ferguson declares Congress' intention that the states have jurisdiction over the regulation of insurance and provides that "No Act of Congress shall be construed to invalidate,

impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance, unless such act specifically relates to the business of insurance." 15 U.S.C. § 1012(b) Property and casualty insurance is one of the most extensively regulated businesses in the economy. Although a primary concern of regulators is solvency, state insurance regulations also provide significant consumer protections. Stare insurance codes prohibit a variety of unfair trade practices, such as rebating, deceptive advertising, inequitable claim settlement and unfair discrimination. Violations are punishable by fines, court injunction, suspension or revocation of license.

Unlike some other less regulated industries. individuals have a ready and accessible venue for resolving complaints of inappropriate actions by insurance companies. State insurance departments maintain complaint divisions and any individual may seek redress through the specific state insurance department. In addition, state regulators themselves review insurer practices through periodic market conduct examinations. The strong regulatory oversight exercised by state regulators provides ample protection for American consumers.

Expansion of oversight authority by the FCC to the marketing practices of insurers would be an inappropriate incursion on state regulatory authority without significantly enhancing consumer protection. Few complaints have been lodged against property and casualty insurers for privacy violations and there is no evidence to warrant the expansion of federal oversight. State regulators are capable of initiating and enforcing market conduct regulations with respect to insurers, including limitations on the use of ielemarketing.

Do-Not-Call List

The commission requested comments on the establishment of a national Do-Not-Call list. The commission considered the establishment of such a national database in implementing regulations. In declining to establish a national Do-Not-Call list the commission acknowledged the cost and difficulty of establishing and maintaining such a list. The commission also noted that creation of such a list could jeopardize the security of proprietary information and the privacy of unpublished telephone numbers.

The same concerns acknowledged by the commission ten years ago remain equally valid today Creation of a national registry would be costly and maintenance of the list in a timely and reasonably accurate manner will be difficult.

The frequency of changes in telephone numbers would present significant and costly problems. A significant percenrage of telephone numbers change each year necessitating frequent and consistent updates to maintain the accuracy of any database. As a result, insurers seeking to use telemarketing as a form of marketing would be required to frequently access the revised database and update their records. The cost of such action would be significant and result in increased insurance costs for all Americans. Additional restrictions, such as limitations on the use of predictive dialers or pre-acquired account information, would likewise result in increased costs and reduced choice for American consumers.

Established Business Relationship

The TCPA implementing regulations provide exemptions for "established business relationships." The commission correctly concluded that solicitations by businesses with which the individual has a prior business relationship does not adversely affect the consumer's privacy interests. Established business relationship exemptions are essential in any regulations restricting marketing practices. In enacting the landmark Gramm-Leach-Bliley Act, **PL** 106-102 (11-12-99), Congress imposed significant new restrictions on the use by financial institutions, including insurance companies, of customer information. However, Congress permitted the use and disclosure of such nonpublic personal information to "perform services for or functions on behalf of the financial institution, including marketing of the financial institution'sown products or services, or financial products or services offered pursuant to joint agreements between two or more financial institutions that comply with the requirements imposed by the regulations prescribed under section 504 [15 U.S.C. § 68041, if the financial institution fully discloses the providing of such information and enters into a contractual agreement with the third party that requires the third party to maintain the confidentiality of such information." 15 U.S.C.§ 6802(b)(2).

Even as Congress was enacting the nation's premier privacy statute, lawmakers recognized the legitimate need of financial institutions to market to existing customers and concluded that such activities did not threaten the privacy of individuals. The commission should not seek to impose any further restrictions on marketing to consumers with which the business has an established business relationship.

Conclusion

NAII strongly opposes any attempt by the commission to extend its regulatory oversight in this area over insurers. McCarran-Ferguson grants exclusive jurisdiction over insurance regulation to the states and each state has adequate oversight and supervision capabilities to protect the privacy of consumers. NAII also opposes the application of a national Do-Not-Call list to insurers. NAII strongly supports established business relationship exemptions from marketing restrictions.

NAII appreciates the opportunity to comment on the pending proposed rulemaking. On behalf of our more than 715 member companies and their hundreds of millions of policyholders, we urge the FCC to refrain from expanding jurisdiction under the TCPA to insurers, imposing national Do-Not-Call database restrictions on the highly regulated insurance industry, or restricting existing established business relationship exemptions. If you have any questions. please feel free to contact me at (202) 639-0473; julie.gackenbach@naii.org or Terry Tyrpin at (847) 297-7800: terry.tyrpin@naii.org.

Respectively submitted,

Julie Leigh Gackenbach